

COUNTY COUNCIL
OF
HARFORD COUNTY, MARYLAND

BILL NO. 94-12 (as amended)

Introduced by Council President Wilson

Legislative Day No. 94-6 Date February 15, 1994

AN ACT to approve a Memorandum of Understanding between Harford County, Waste Energy Partners Limited Partnership, and the Northeast Maryland Waste Disposal Authority, in regard to the current Waste Supply Contract and certain issues concerning the Waste-to-Energy Facility; to authorize the execution and approve the form of the Memorandum; and generally relating to various matters in connection with the Waste-to-Energy Facility.

By the Council, February 15, 1994

Introduced, read first time, ordered posted and public hearing scheduled

on: March 8, 1994

at: 6:30 p.m.

By Order: James D. Vannoy, Acting Secretary

PUBLIC HEARING

Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on March 8, 1994, and concluded on, March 8, 1994

James D. Vannoy
Acting Secretary

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law. Underlining indicates language added to Bill by amendment. Language lined through indicates matter stricken out of Bill by amendment.

1 WHEREAS, The Administration has negotiated a memorandum of
2 understanding ("MOU") with Waste Energy Partners Limited
3 Partnership ("Company"), which owns and operates the Waste-to-
4 Energy facility ("Facility") at which the County's municipal solid
5 waste is incinerated, and the MOU covers various matters in regard
6 to operation of the Facility; and

7 WHEREAS, Section 520 of the County Charter requires that
8 before any contract, lease, or other obligation in excess of \$3,000
9 requiring the payment of funds from the appropriations of a later
10 fiscal year can be effective, it must be approved by the County
11 Council; and

12 WHEREAS, On February 3, 1994, the County Council Attorney
13 issued an opinion finding that the MOU constitutes a modification
14 of the 1986 contract between the County and the Company which
15 governs the operation of the Facility, that the MOU is subject to
16 Section 520 of the Charter and must be approved by the Council to
17 become effective, and that Council approval must be in the form of
18 legislation; and

19 WHEREAS, Therefore, absent Council approval, the MOU could
20 very well constitute an ultra vires act by the County, and under
21 the law an ultra vires act usually is void from its inception and
22 does not constitute a contract at any time; and

23 WHEREAS, One of the reasons advanced to date for agreeing to
24 the MOU is the desire to prevent the Company from bringing in out-
25 of-county waste to be burned at the incinerator; and

26 ~~WHEREAS, That reason appears to be a moot point, since Section~~
27 ~~7.1 of the 1986 contract gives the County the option to increase~~

1 ~~the monthly tonnage of County waste disposed of at the Facility up~~
2 ~~to an amount that is limited only by the Facility's capabilities;~~
3 ~~and~~

4 ~~WHEREAS, This section of the contract would allow the County~~
5 ~~to use the entire capacity (approximately 117,000 tons per year)~~
6 ~~of the Facility, thus pre-empting any need for the Facility to~~
7 ~~bring in out-of-county waste, and is feasible in light of the fact~~
8 ~~that the County is currently delivering approximately that much~~
9 ~~waste on an annual basis to the Facility; and~~

10 WHEREAS, The 1986 contract obligates the County to use the
11 County landfill to dispose of all ash produced at the Facility,
12 regardless of whether the ash is produced from the incineration of
13 County or out-of-county waste; and

14 WHEREAS, The Council believes that if the County landfill is
15 to be utilized for the disposal of ash from out-of-county waste,
16 it should be the County, not the Company, which controls the source
17 of such out-of-county waste, and control could give the County a
18 number of advantages; and

19 WHEREAS, For example, the County could ensure that the
20 Facility would be used to dispose of out-of-county waste only in
21 accord with a regional solid waste agreement providing benefits to
22 all signatories of the regional agreement, and the agreement could
23 require that a proportional amount of ash be returned to each
24 county which disposed of waste at the Facility; and

25 WHEREAS, ~~Regardless of the advisability of other proposed~~
26 ~~terms of the MOU, the~~ The proposal to conduct the H-Cl HCl

1 Operating Plan (item 5 of the MOU) is one that would benefit the
2 people and the environment of Harford County, and is a pro-active
3 approach the Council applauds;

4 NOW, THEREFORE,

5 Section 1. Be It Enacted By The County Council of Harford
6 County, Maryland, That ~~the following items of the MOU are hereby~~
7 ~~approved;~~

8 ~~A. The H-C1 Operating Plan (item 5 and Exhibit A of the~~
9 ~~MOU);~~

10 ~~B. The bond refunding transaction (item 7 of the MOU);~~

11 ~~C. Representations (item 8 of the MOU);~~

12 ~~D. Paragraphs a, b, c, and all but the second sentence of~~
13 ~~paragraph d of item 9 of the MOU; and~~

14 ~~E. The above items are attached hereto and are hereby made~~
15 ~~a part of this Act~~ the Memorandum of Understanding ("MOU") between
16 the County, Waste Energy Partners Limited Partnership, and the
17 Northeast Maryland Waste Disposal Authority, dated December 1,
18 1993, a copy of which is attached hereto and hereby made a part of
19 this Act, is hereby approved, subject to the following: such
20 contract shall contain a provision to the effect that ash residue
21 produced by the incineration of Permitted Materials, as defined in
22 the MOU (or an equal amount thereof), and ash residue produced by
23 the incineration of out-of-county waste (or an equal amount
24 thereof) shall not be deposited in or disposed of at any landfill
25 or disposal facility owned or operated by Harford County, Maryland.

26 Section 2. And Be It Further Enacted, that this Act hereby
27 authorizes execution, without further County Council action, of a
28 ~~contract incorporating the items of the MOU approved by Section 1~~

1 of this Act, and the County Executive is hereby authorized to
2 execute such a contract on behalf of the County, ~~and the contract~~
3 ~~to be so executed will be in the form approved by this Act with (1)~~
4 ~~changes in form or changes in content that do not alter the~~
5 ~~substance of the MOU items approved by Section 1 of this Act, or~~
6 ~~(2) such other changes as may be approved by resolution of the~~
7 ~~County Council. Any resolution adopted pursuant to this Act shall~~
8 ~~be effective upon approval by the County Executive. County.~~

9 Section 3. And Be It Further Enacted, that this Act shall
10 take effect 60 calendar days from the date it becomes law.

EFFECTIVE: June 6, 1994

94-12

AS AMENDED

HARFORD COUNTY BILL NO. 94-12 (as amended)(Brief Title) Waste-to-Energy FacilityMemorandum of Understanding

is herewith submitted to the County Council of Harford County for enrollment as being the text as finally passed.

CERTIFIED TRUE AND CORRECT

ENROLLED

James D. Vannoy
Acting Secretary
of the Council

James D. Vannoy
President of the Council

Date April 5, 1994Date April 5, 1994

BY THE COUNCIL

Read the third time.

Passed: LSD 94-10 (April 5, 1994)

Failed of Passage: _____

By Order

James D. Vannoy
Acting Secretary

Sealed with the County Seal and presented to the County Executive for approval this 7th day of April, 1994 at 3:00 p. m.



James D. Vannoy
Acting Secretary

BY THE EXECUTIVE

William M. Redmann
COUNTY EXECUTIVE

APPROVED: Date April 7, 1994

BY THE COUNCIL

This Bill (No. 94-12, as amended), having been approved by the Executive and returned to the Council, becomes law on April 7, 1994.

James D. Vannoy
Acting Secretary

EFFECTIVE DATE: June 6, 1994

94-12

AS AMENDED